Editor's note: **Reconsideration granted; Affirmed as clarified -- 136 IBLA 254 (Sept. 17, 1996)**

HOME-STAKE ROYALTY CORP.

IBLA 93-298 Decided July 12, 1994

Appeal from a decision of the Deputy State Director, Lands and Minerals, New Mexico State Office, Bureau of Land Management, upholding an order to report production on a leasehold basis. (NM) SDR 93-009.

Affirmed.

1. Contracts: Construction and Operation: General Rules of Construction--Indians: Mineral Resources: Oil and Gas: Communitization Agreements--Oil and Gas Leases: Communitization Agreements

   BLM properly required oil production to be reported on a leasehold basis after finding it was not subject to a communitization agreement because wells drilled on a restricted Indian lease included in a 640-acre communitized area produced oil instead of natural gas and associated liquid hydrocarbons identified in the agreement as the substances communitized.

APPEARANCES: George H. Lowrey, Esq., Tulsa, Oklahoma, for Home-Stake Royalty Corporation.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Home-Stake Royalty Corporation (Home-Stake) has appealed from a February 22, 1993, decision of the Deputy State Director, Lands and Minerals, New Mexico State Office, Bureau of Land Management (BLM), upholding a November 25, 1992, order of the Tulsa District Office, BLM, that required Home-Stake to report production on a leasehold basis from the Susie No. 5 and No. 6 wells, located on restricted Indian Lease No. I-51-IND-55245. Restricted Indian Lease No. I-51-IND-55245 embraces 160 acres described as the SE¼ sec. 1, T. 6 N., R. 13 W., Indian Meridian, Caddo County, Oklahoma, and the Susie No. 5 and No. 6 wells are situated in the SW¼ NE¼ SE¼ sec. 1 and the NW¼ SW¼ SE¼ sec. 1.

Effective July 10, 1979, the Oklahoma Corporation Commission (OCC), by Order No. 155522, established 640-acre drilling and spacing units for secs. 2, 3, and 11, T. 6 N., R. 13 W., Indian Meridian, Caddo County, Oklahoma, listing, among others, the Upperthrust Viola Formation as a common source of supply for gas production. By Order No. 331838, dated October 27, 1988, OCC extended the purview of Order No. 155522 from sec. 2

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into sec. 1 and established a 640-acre drilling and spacing unit for sec. 1, identifying the Upperthrust Viola Formation as a common source of supply for the production of gas and gas condensate. On December 14, 1988, OCC issued Order No. 333336, pooling all interests in sec. 1, T. 6 N., R. 13 W., and listing the Upperthrust Viola Formation, among others, as a common source of supply. The pooling order designated Home-Stake the operator of the 640-acre drilling and spacing unit.

On December 1, 1989, the Anadarko Agency, Bureau of Indian Affairs (BIA), approved Communitization Agreement (CA) OKNM79475. The agreement communitized all oil and gas leases within sec. 1, T. 6 N., R. 13 W., Indian Meridian, Caddo County, Oklahoma, and identified the communitized substances as "natural gas and associated liquid hydrocarbons" producible from various formations, including the Upperthrust Viola (CA at 2). Home-Stake obtained location exceptions from OCC authorizing the drilling of both the Susie No. 5 and No. 6 wells, as well as BLM approval for the wells. Both wells were completed as oil producers.

On June 1, 1992, the Tulsa District Office informed Home-Stake that the Susie No. 5 and No. 6 wells were not committed under the terms of the communitization agreement and were therefore leasehold wells only, the royalties from which were to be credited to restricted Indian lease No. I-51-IND-55245. Home-Stake sought State Director review of the District Office decision, and on August 28, 1992, the Deputy State Director vacated it and remanded the case to allow the District Office to conduct a geologic evaluation to determine if the wells were producing from the communitized Upperthrust Viola formation, as Home-Stake contended.

On November 25, 1992, after preparing and analyzing the required geologic report, the Tulsa District Office concluded the Susie wells were not producing from the communitized Upperthrust Viola formation, and reaffirmed its determination that production from the Susie No. 5 and No. 6 wells on restricted Indian Lease No. I-51-IND-55245 should be reported on a leasehold basis. Home-Stake again sought State Director review, arguing that current geologic evidence conclusively established that the wells were producing from the communitized Upperthrust Viola formation.

In his February 22, 1993, decision, the Deputy State Director agreed that Home-Stake had proven the Susie wells were producing from the Upperthrust Viola formation. He concluded, however, that the Susie No. 5 and No. 6 wells were not producing communitized substances, as defined by the communitization agreement. He observed that OCC drilling and spacing orders found classification of the production was natural gas and that the communitization agreement was established for developing natural gas and associated liquid hydrocarbons. Since the agreement covered only gas and condensate, not oil, and the Susie No. 5 and No. 6 wells were producing oil, the Deputy State Director found that the wells were not producing communitized substances, and upheld the district office's order requiring Home-Stake to report production from the wells on a leasehold basis.

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On appeal Home-Stake contends that rights of interest owners in the drilling and spacing unit area have vested and that BLM's action amounted to rescission of the communitization agreement and a taking of private property without just compensation, in violation of the Fifth Amendment. Home-Stake bases this claim on Oklahoma law which, Home-Stake maintains, authorizes only one well for a given formation within each OCC-designated drilling and spacing unit, unless OCC allows additional wells to be drilled by an increased density order, and establishes that after initial production from a designated common source of supply the interests in the producing well vest in accordance with a valid compulsory pooling order. Home-Stake asserts that the parties to the communitization agreement intended to incorporate these principles into their contractual relationship. Home-Stake concludes that, since OCC made the drilling and spacing unit the communitized area and OCC's pooling order vested rights and interests with respect to both the initial well and all subsequent wells drilled in the area, the rights and interests of the parties to the communitization agreement have vested and may not be divested by BLM.

Home-Stake argues, despite the limitation in the agreement of communitized substances to natural gas and associated liquid hydrocarbons, that all hydrocarbons produced from the communitized area are included within the agreement. Home-Stake states that under Oklahoma law an OCC drilling and spacing order applies to all wells completed in a common source of supply, regardless whether an individual well produces gas or oil, and the fact that the drilling and spacing order classified the Upperthrust Viola formation for gas and gas condensate does not limit the order to those products. Home-Stake asserts that the parties to the communitization agreement intended to bring themselves under control by OCC, and that, therefore, the agreement must be read and interpreted against the backdrop of OCC's rules, regulations, and practices. Since under OCC rules the unit spacing remains the same whether oil or gas is discovered, Home-Stake avers that the parties must have been aware that whatever hydrocarbons were discovered would be communitized just as if the restricted Indian lease had been a non-Indian lease. Accordingly, Home-Stake contends that the Deputy State Director's decision must be reversed.

[1] This opinion must decide the meaning of the phrase "natural gas and associated liquid hydrocarbons" used in the communitization agreement. Contracts entered into by an Indian tribe and approved by the Secretary are subject to the same rules of interpretation as are contracts between private parties. Asarco Inc., 116 IBLA 120, 126 (1990), and cases cited. Federal law, which controls the construction of Federal contracts including Indian contracts, follows principles of general contract law. Id. A primary task of contract interpretation is to ascertain the intent of the parties from the language of the contract and the circumstances under which it was made by giving contract provisions their natural and most commonly understood meaning. Gibbs v. Air Canada, 810 F.2d 1529, 1533 (11th Cir. 1987). The plain and unambiguous meaning of a written agreement controls unless there is clear evidence of contrary intent. Pennsylvania Ave. Development Corp. v. One Parcel of Land in D.C., 670 F.2d 289, 292 (D.C. Cir. 1981). The communitization agreement at issue here unambiguously

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defines communitized substances as natural gas and associated liquid hydrocarbons. These substances do not include oil. Within the plain meaning of the agreement, the oil produced from the Susie No. 5 and No. 6 wells is not a substance communitized under the agreement.

While conceding that oil is distinct from natural gas and associated liquid hydrocarbons, Home-Stake nevertheless insists that since Oklahoma law considers any substance produced from an approved drilling and spacing unit to be subject to a pooling agreement covering that unit, the oil produced from the Susie No. 5 and No. 6 wells must be considered a communitized substance covered by the communitization agreement. Home-Stake's contention to the contrary notwithstanding, OCC has no authority over lands held in trust by the Federal government for Indian tribes or individual Indians. Assiniboine & Sioux Tribes, 85 IBLA 39, 42 (1985). BLM, not the state oil and gas commission, has jurisdiction to set spacing and other requirements on Indian lands. San Juan Citizens Alliance, 129 IBLA 1, 6 (1994), and cases cited. Although Home-Stake asserts that the parties intended to incorporate Oklahoma law into their contractual relationship, the communitization agreement does not support this assertion. Not only do the contract sections cited by Home-Stake refer to applicable provisions of Federal, as well as State, statutes, rules, regulations, and orders, but another provision of the agreement explicitly recognizes the right of the Secretary of the Interior to supervise all operations within the communitized area in accordance with the Federal lease terms and regulations (CA at 4). Any agreement by BIA to permit a communitization agreement to be governed by State rather than Federal law (especially where to do so would effectively authorize a 640-acre spacing unit for an oil well instead of the smaller area oil wells are usually considered capable of draining) would conflict with the Secretary of the Interior's fiduciary responsibilities as trustee for Indian lands and as supervisor and administrator of oil and gas leases; in his fiduciary capacity, the Secretary "has a duty to maximize lease revenues." See Cheyenne-Arapaho Tribes of Oklahoma v. United States, 966 F.2d 583, 588-89 (10th Cir. 1992), cert. denied, 113 S. Ct. 1642-43 (1993). It is therefore concluded that Oklahoma law does not control interpretation of the communitization agreement.

Home-Stake's contention that oil produced from the Susie No. 5 and No. 6 wells must be considered a communitized substance subject to the communitization agreement flatly contradicts the plain meaning of the agreement. Even if to do so were common industry practice in Oklahoma, it cannot prevail over the intention of the parties plainly expressed in the contract. Tomco, Inc., 29 IBLA 298, 301 (1977). Accordingly, we find that the Susie No. 5 and No. 6 wells on restricted Indian lease No. I-51-IND-55245 are not producing communitized substances and that BLM properly required Home-Stake to report production from those wells on a leasehold basis. Since oil produced from those wells is not covered by the communitization agreement, the parties to that agreement have no rights or interests in the production, and Home-Stake's claim that BLM's decision constitutes an unconstitutional taking of private property is rejected.

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Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge